

DDD-PI-046

SUBJECT: Guardianship Hearing Costs for Persons with Mental Retardation
Receiving Developmental Disabilities Case Management

EFFECTIVE

DATE: July 1, 1988

Our attention has been called to situations that case management is encountering relating to guardianship for mentally retarded persons.

The law that enabled the Superintendent at Grafton State School to act as guardian, and which also set procedures to establish a judicially supervised guardianship of former wards, was repealed February 1, 1988. Under the repealed procedure, a service team could request a state's attorney to petition for a hearing at no cost to the petitioner. The costs of visitors or physicians and guardian ad litem services were charged to the individual client, if the client had sufficient funds, or to the Department of Human Services, Developmental Disabilities Division. This process applied only to former wards of the Grafton State School Superintendent.

There are former wards on the D.D. Case Management caseload who may still have need of a guardian. There are also D.D. Case Management clients who have never been former wards of the Grafton State School Superintendent but may require a guardian. Finally, our guardianship concept anticipates review over time of the continuing need for a guardian; i.e., as a person becomes more functional, the guardian requires less authority or as regression occurs the guardian requires more authority. These situations require the ability to secure guardianship services on an ongoing basis.

Regional Developmental Disabilities Program Administrators or their designees are authorized to negotiate and pay the costs of an attorney (to represent the petitioner), a visitor or physician, and a guardian ad litem. Such arrangements may be provided through an Emergency Services contract if the case meets each of the following criteria:

1. The petitioner must be the Regional Developmental Disabilities Program Administrator or designee.
2. Costs of guardianship may not be paid through this process if the client would have more than \$500 in reserve after payment of monthly living expenses -and guardianship costs. Any client funds in excess of the \$500 reserve may be used to defray costs associated with guardianship. State funds may be used to pay expenses not covered after client reserves have been reduced to \$500.
3. The fees or costs are paid only to attorneys, visitors, physicians, and guardians ad litem who have contracted to furnish services, prior to appointment in each case.

4. The fee does not exceed any limit established by the Regional Developmental Disabilities Program Administrator in consultation with the Developmental Disabilities Division.
5. The petition identifies, as proposed visitor, physician, and guardian ad litem, the person or persons designated by the Regional Developmental Disabilities Office.

The Regional Developmental Disabilities Office will need to negotiate appropriate fees for the attorney, court-appointed visitor or physician, and guardian ad litem. You will also need to arrange for payment directly to the attorney representing you as petitioner, the guardian ad litem, and visitor, and, in the case of clients who are not eligible for Medical Assistance, the physician. Payments will be made through Emergency Services and the Regional Developmental Disabilities Program Administrator will develop a contract for payment directly to each of the individuals providing a service. If the court appoints someone other than the persons designated by the Regional Developmental Disabilities Office to act as visitor or guardian ad litem (or physician, if the client is ineligible for Medical Assistance), the cost of the services of those persons may not be paid.

This process is not like that established to comply with the repealed statutory guardianship law for former wards of the Superintendent of the Grafton State School. The statute which authorized county judges to order the Department to pay the costs of guardianship proceedings, for former wards, has been repealed. The Department will continue to pay costs under the prior process only in cases where the petition under consideration was filed on or before January 31, 1988.